

1 IN THE DISTRICT OF THE UNITED STATES OF AMERICA

2 FOR THE SOUTHERN DISTRICT OF ILLINOIS

3 -----  
4 DANE HARREL, et al.,

Plaintiffs,

v. Case No. 23-cv-141-SPM

5 KWAME RAOUL, et al.,

Defendants.

6 -----  
7 FEDERAL FIREARMS LICENSEES OF

ILLINOIS, et al.,

Plaintiffs,

8 v. Case No. 23-cv-215-SPM

JAY ROBERT "JB" PRITZKER, et al.,

9 Defendants.

10 -----  
11 **CALEB BARNETT, et al.,**

**Plaintiffs,**

12 **v. Case No. 23-cv-209-SPM**

**KWAME RAOUL, et al.,**

**Defendants.**

13 -----  
14 JEREMY LANGLEY, et al.,

Plaintiffs,

15 v. Case No. 23-cv-192-SPM

BRENDAN KELLY, et al.,

16 Defendants.

17 -----  
18 Transcript of Status Conference

February 2, 2024

19 Proceedings held by Zoom before

the Honorable **STEPHEN P. McGLYNN,**

United States District Judge Presiding  
20 -----

21 **REPORTED BY:**

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23 Following proceedings recorded by mechanical stenography;

24 transcript produced by computer-aided transcription.

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TRANSCRIPT OF PROCEEDINGS

(Proceedings commenced at 1:35 p.m.)

COURTROOM DEPUTY: United States District Court for the Southern District of Illinois is now in session. The Honorable Stephen McGlynn presiding. The Court calls case number 23-CV-209 Caleb Barnett vs. Raoul, et al. The case is called for a status conference. Parties, if you would please identify yourselves for the record.

MR. ROWEN: Good afternoon, Your Honor. This is Matthew Rowen for the Barnett Plaintiffs.

MR. MAAG: Thomas Maag for the Langley Plaintiffs.

MR. SIGALE: Good afternoon, Your Honor. David Sigale, S-I-G-A-L-E, on behalf of the Harrel Plaintiffs.

MR. BRADY: Good afternoon, Your Honor. Sean Brady and Konstadinos Moros on behalf of the FFL Illinois Plaintiffs.

MR. PETER MAAG: Peter Maag for the Langley Plaintiffs.

MR. VINTON: Norm Vinton from McHenry County State's Attorney office on behalf of State's Attorney Patrick Kenneally.

MR. WELLS: Good afternoon, Your Honor. Christopher Wells on behalf of the State defendants Governor Pritzker, the Attorney General and the Illinois State Police Director.

THE COURT: All right.

1 MS. MUSE: Good afternoon. Kathryn Hunt Muse for the  
2 State defendants, the same as Mr. Wells. Thank you, Your  
3 Honor.

4 MR. HILL: Keith Hill on behalf of Cole Shaner.

5 MR. YSURA: Good afternoon, Your Honor. This is  
6 Tommy Ysura on behalf of the St. Clair County defendants.

7 MS. ASFOUR: Katherine Asfour on behalf of the  
8 Randolph County defendants.

9 THE COURT: All right. Anybody else?

10 MR. LOTHSON: Andrew Lothson for the Barnett  
11 Plaintiffs.

12 THE COURT: All right. I apologize. I only have --  
13 on the screen I'm only seeing ten lawyers and there is more  
14 than that so I don't know how this is -- how this works, if  
15 you rotate out if you start to speak or what.

16 All right. When we met in early January we talked  
17 about -- and I asked the Plaintiffs to get together to talk  
18 about how they see proceeding for a final hearing on the  
19 merits. This is the only case like this around the country.  
20 In some of the cases, the parties have just submitted various  
21 stipulations, declarations from certain witnesses and then  
22 briefed it. Others, they have called witnesses. But let's  
23 talk to -- who wants to take lead for the Plaintiffs in  
24 talking about how you foresee proceeding? Do you anticipate  
25 calling any witnesses to testify live at a hearing?

1 MR. ROWEN: I'm happy to start off for the  
2 Plaintiffs. This is Matthew Rowen who represents the Barnett  
3 Plaintiffs, but I can speak on that.

4 So, yes, the Plaintiffs do intend to call witnesses.  
5 You know, we heard Your Honor loud and clear at the last  
6 status conference that in Your Honor's words we all need to be  
7 trial lawyers now and to that end, I think as the State's  
8 status report reflects, the parties have had a number of  
9 discussions both along the plaintiff groups and between the  
10 two sides about what needs to be proved in light of the  
11 Seventh Circuit's opinion, which is in many ways very  
12 different from the standard under which the other cases in the  
13 other jurisdictions have been proceeding. And we've had  
14 discussions in terms of how we can go about proving the  
15 factual questions that the Seventh Circuit seems to have in  
16 mind.

17 The State put forward a schedule that they put in  
18 their status report that extends out into the fall. To be  
19 fair to the State, the Plaintiffs have not had a great time  
20 reaching an agreement among ourselves, which I think reflects  
21 the fact that there are four cases with different claims  
22 against different parties. And even just looking at the  
23 Second Amendment claims we have some different perspectives in  
24 terms of strategy. That said, we, on the Plaintiffs' side,  
25 heard and share Your Honor's desire to move quickly to a final

1 resolution so we've been trying to figure out way to tighten  
2 the schedule for things like stipulated facts or narrowing the  
3 scope of issues in dispute, but we haven't been able to make  
4 much headway in terms of getting an agreement with the State  
5 on those sorts of things. You know, if anything, the State  
6 seems inclined to want to litigate issues like standing that  
7 we had thought may be behind us.

8 With all that said, we're here to work with Your  
9 Honor to figure out how to move things along as expeditiously  
10 as possible, while still recognizing that there are a lot of  
11 moving pieces here that are going to be unique in the sort of  
12 the constellation of these Second Amendment cases across the  
13 country in light of the standard that the Seventh Circuit has  
14 put us to.

15 THE COURT: Mr. Wells, what does the Government  
16 envision? Does it envision calling any witnesses? Does it  
17 envision calling any witnesses or doing as they've done in  
18 some other states where there's just declarations that have  
19 been submitted and then argument?

20 MR. WELLS: So Your Honor, I think it depends on what  
21 Plaintiffs' case in chief is. I think we are open to either  
22 approach. We do think there's some benefit to proceeding  
23 primarily on the papers, that that could help streamline  
24 issues. I did want to just flag for the Court's attention  
25 Mr. Rowen mentioned a status report and it's one that we filed

1 solely on behalf of the state defendants an hour before the  
2 hearing so I completely understand if the Court has not had an  
3 opportunity to review that. I think it reflects some of the  
4 difficulties that from our perspective that we've encountered  
5 in trying to get some basic information about what the scope  
6 of the claims are, what Plaintiffs are seeking which items, a  
7 lot of pretty fundamental questions.

8 We've had some productive exchanges this week, but  
9 frankly our suggestion in that status report is a couple of  
10 things. One, we think there would be significant benefit to  
11 having the parties engage with the Magistrate to come up with  
12 a proposed schedule that we can live with and that affords the  
13 parties what they need in terms of discovery. I think one of  
14 the things that we're struggling with and I think we heard it  
15 from Mr. Rowen is that what this case looks like now I think  
16 is very difficult from Plaintiffs' perspective than when they  
17 filed this case.

18 And to the extent they intend to change their theory  
19 or strategy or the scope of their claims, that's their right.  
20 We just have to know what those claims are and what evidence  
21 they're going to present. And given that we are the  
22 defendants, who according to the Seventh Circuit if the record  
23 stays as it is we are likely to fail, we need to know how  
24 things are changing. And that, I think is that's what we've  
25 been trying to get at in our conferrals with Plaintiffs and



1 thus far we just feel like we don't have it.

2 So the State defendants have put forward at the  
3 preliminary injunction proceedings a variety of declarations  
4 from a variety of experts. We think that, again, we could  
5 move forward to streamline the proceeding on the papers so to  
6 speak that would move things along, but we've got to know what  
7 we're aiming at here because it seems to have shifted as I  
8 think Mr. Rowen candidly acknowledged.

9 THE COURT: Tom, did they file something today?

10 UNIDENTIFIED SPEAKER: (Undiscernible.)

11 THE COURT: All right. I've been in jury trial all  
12 week. I'm told that something was filed in the last hour.  
13 How long is it?

14 MR. WELLS: It's probably longer than it should be.  
15 This is Mr. Wells again. Really what it is, Your Honor, is  
16 our attempt to kind of summarize how we've conferred in the  
17 interim between the last time we met. It kind of summarizes  
18 what we've heard from Plaintiffs, what we've communicated back  
19 and frankly our two respective proposals on schedule. And  
20 again, I think what we're struggling with is understanding how  
21 Plaintiffs are going to litigate this in light of what the  
22 Seventh Circuit has said. And once we get that clarification,  
23 I'm hoping that it will streamline things. But without that,  
24 it's very hard for us to say, you know, what we're going to  
25 present.

1           So for instance, we've learned I think just this week  
2   that both the Langley Plaintiffs and the Harrel Plaintiffs,  
3   which I think will come as a surprise to the Court, are  
4   actually proceeding on challenging the provisions relating to  
5   grenade launchers. So we don't see that in the pleadings. We  
6   don't know where that is on the face of those complaints. It  
7   is kind of hard for us to talk about a hearing when I don't  
8   know whether or not we're going to have to call an expert  
9   talking about the history of grenades and their use in the  
10   military context. So our suggestion in the status report was  
11   two-fold, Plaintiffs, that we should go to the Magistrate to  
12   try to work out a schedule and we should frankly get amended  
13   pleadings so we can know what it is these Plaintiffs are  
14   challenging and what evidence -- what is their evidence of  
15   standing for those items?

16           Again, we feel like we just don't have a picture of  
17   what -- what exactly we're going to be litigating when we're  
18   finding out this week that we're talking about grenade  
19   launchers.

20           MR. SIGALE: Your Honor, may I speak for a second?

21           THE COURT: If you identify who is speaking.

22           MR. SIGALE: This is David Sigale for the Harrel  
23   Plaintiffs. Two things, first of all after discussing with my  
24   people we will not be presenting proof or advancing the  
25   grenade launcher issue. So just to clarify that. Second of

1 all, Mr. Wells, I suspect filed that status report that he's  
2 talking about in the Barnett pleading. As being a noticed  
3 attorney on that, I'm going to get that report like at 11:59  
4 tonight so I haven't seen it. Is there some way if someone  
5 could e-mail it? Otherwise, I have no idea what document  
6 everyone is talking about.

7 MR. WELLS: Sure. This is Mr. Wells. David, we will  
8 e-mail it to you. And again, our intent, we recognize that it  
9 was a tight timeframe, but frankly, it is because we didn't  
10 know Plaintiffs' position on our latest proposal from meet and  
11 confer. We didn't have any proposed schedule from the  
12 Plaintiffs until 8:36 this morning.

13 MR. SIGALE: I'm not --

14 THE COURT: Let me do it this way. What written  
15 discovery is the Plaintiffs going to send to the State of  
16 Illinois that -- what are the sort of things that you're going  
17 to be asking in written discovery of the State of Illinois?

18 MR. ROWEN: This is Matthew Rowen, again, for the  
19 Barnett Plaintiffs. I think the universe of factual inquiries  
20 that at least my clients intend to present to the State is  
21 relatively small and that the big universe of facts are in the  
22 form of expert facts that under the Seventh Circuit's opinion  
23 take the shape of things like, you know, physical  
24 characteristics of different features of firearms or physical  
25 characteristics of different combinations of features and

1 historical usage and things like that. So I think the  
2 greatest bulk of the facts that the Seventh Circuit's opinion  
3 puts the onus on the Plaintiffs to put on are not things that  
4 we're going to necessarily be asking the State. You know, I'm  
5 sure there will be a few things but the relatively largest  
6 bucket will be expert discovery.

7 THE COURT: I'm having a hard time hearing anybody.  
8 Is there any way we can make the acoustics in here any better  
9 than it is? If I wear Hannah's headset does that work. I  
10 don't even know if it reaches.

11 Well, so the capabilities of the firearms -- and  
12 you're going to ask the State about that? Wouldn't it be  
13 easier just to see if the manufacturer would give us the spec  
14 sheet?

15 MR. ROWEN: I apologize, this is Mr. Rowen again, if  
16 the audio didn't go through. What I'm saying is that for most  
17 of the facts that the Seventh Circuit had said that the  
18 Plaintiffs will need to prove, those are not the types of  
19 questions or inquiries that at least my clients intend to ask  
20 the State. But in order to satisfy the federal rules of  
21 evidence, a lot of that is going to need to come in through  
22 expert discovery because a lot of what the Seventh Circuit at  
23 least as we read that opinion goes beyond just the bare  
24 physical specifications. So, you know, I think from our  
25 perspective the bulk of the factual development will be, you

1 know, expert discovery.

2 MR. MAAG: Thomas Maag for the Langley Plaintiffs.  
3 Yes, I agree that a lot of the specifications can come from  
4 the manufacturers, I think such as owner's manuals. There  
5 are, of course, a compendium of learned treatises I think is  
6 the way it's referred to in the federal rules that, of course,  
7 discuss firearms specifications, both military and  
8 non-military going back hundreds of years. I think those are  
9 appropriately if not directly at least as counsel indicated  
10 through experts. The kind of discovery I'm contemplating from  
11 the State is more along the line of tell us what you do know,  
12 if anything, to try to limit some of the background  
13 information that we need to put on.

14 For instance, we've submitted that we believe that  
15 there's millions of these AR-15 type rifles. Well, the State,  
16 tell us how many you think there are and perhaps if the answer  
17 is sufficient then we can kind of nip the need for formal  
18 proof of 20 million AR-15 rifles in the United States. If  
19 they admit to some sufficiently large number we can cut that  
20 in the bud as it were and just use their admissions, but  
21 mostly background information is what I'm contemplating fact  
22 wise from the State.

23 THE COURT: All right. Let the record reflect that  
24 was Tom Maag speaking. From the Government's standpoint, what  
25 is the discovery you're seeking from the Plaintiffs?

1           MR. WELLS: Sure. In the first instance, we're going  
2 to ask basic information like what weapons do you seek to  
3 purchase or sell, what -- what weapons are you claiming in  
4 common use? For instance, the Seventh Circuit opinion was  
5 pretty focused on AR-15 type rifles. The Plaintiffs'  
6 pleadings were focused on AR-15 type rifles. Mr. Maag alluded  
7 to it, is there a dispute about how many there are in  
8 circulation? We need to know the support for the Plaintiffs'  
9 assertions about, oh, there are 24 million. Okay. What is  
10 the backup for that? Are there other types of weapons that  
11 Plaintiffs are specifically challenging and what other kind of  
12 common use numbers for that? Are they going to proceed with a  
13 common use theory on those? Again, and I think kind of the  
14 first baseline question we're asking is what happens, what  
15 weapons do you want to purchase, what weapons do you want to  
16 sell, what weapons do you want to manufacture? And then I  
17 think that leads to the question of what are the  
18 specifications of those weapons, what is the design history of  
19 those weapons? Are they military in nature or military in  
20 origin? That is, I think, what we're bumping up against is  
21 just a lack of basic understanding that beyond the AR-15 and  
22 the modern sporting rifles, as Plaintiffs characterize them,  
23 what else are we talking about because we need to develop --  
24 we need to understand what specific weapons so we can have  
25 experts opine on the characteristics of those opinions.

1 THE COURT: But you're already submitted experts.

2 MR. WELLS: This --

3 THE COURT: When this was all filed there's  
4 affidavits from experts, the Government has affidavits of  
5 experts. They had detailed reports. You submitted writings,  
6 Plaintiffs have. I don't think we should try to make this  
7 tougher than it is.

8 MR. WELLS: Just to clarify, the Plaintiffs have not  
9 submitted expert declarations. We have not gotten any expert  
10 information or expert disclosures from the Plaintiffs and  
11 again, I think what we're bumping up against is that the case  
12 as pled focused on modern sporting rifles and AR-15 type  
13 rifles. That was the scope of the Seventh Circuit's ruling.  
14 Now, we understand from our conversations with Plaintiffs that  
15 they've got different -- nine different categories as they  
16 assess it of firearms that they're going to introduce proof  
17 on, but we don't know what those nine categories are.

18 While we have experts who opine on different parts of  
19 the statute in modern sporting rifles in particular, we don't  
20 know what Plaintiffs are going to introduce proof on beyond  
21 that specific category of weapons.

22 THE COURT: Any other Plaintiffs want to discuss  
23 issues surrounding discovery? All right. So the firearms  
24 that are commonly held, owned, there's a lot of data in the  
25 records already. I would imagine that maybe some of the

1 Plaintiffs that are sellers of firearms could testify that,  
2 yeah, these are weapons that we hold out for sale and there's  
3 a ready market for purchase by holders of Illinois FOID cards  
4 who pass a background check. There's a market for this,  
5 people in Illinois are buying these guns. The Seventh Circuit  
6 had talked about 24 million versus some other number. I mean,  
7 let's be candid. We know that there's a sufficient number of  
8 AR-15s and other of the semi-automatic rifles sold in Illinois  
9 to holders of FOID cards and that they possess them legally  
10 before the enactment of the statute. I don't think it's going  
11 to be a tough hurdle to climb for most of these.

12 Now, if I recall correctly, you have the actual AK-47  
13 is not widely held. There's only a relatively small number of  
14 them. That doesn't mean that there aren't a bunch of copycats  
15 or knockoffs. Do we really think that there's going to be a  
16 meaningful contest on whether or not there's sufficient AR-15s  
17 owned in Illinois that they're not -- that it's so small that  
18 it's not material.

19 MR. WELLS: Your Honor, so I think there's AR-15s and  
20 then there's other firearms. Right? The record is in a  
21 different state on AR-15s than it is on other types of  
22 firearms. And again, from our perspective, it's in addition  
23 to how many AR-15s there are, it's how are they used, right?  
24 So for instance, the Plaintiffs have put in evidence from  
25 Professional William English. It is a survey. It's not



1 evidence. They've made allegations about a survey from Mr.  
2 English. Is that survey something that they're going to  
3 attempt to introduce? If so, we'd like to have the underlying  
4 data that Mr. English relied upon. We'd like to take his  
5 deposition, right?

6           So I think there's more than meets the eye. We're  
7 not interested in discovery for the sake of discovery. I  
8 think we've shown that we can move incredibly quickly in these  
9 cases. This case was the first decision by any court of  
10 appeal in the United States post *Bruin* on assault weapons  
11 statute, and it came out ten months after the case was filed.  
12 But what we need to know, again, is what weapons -- like, for  
13 instance, if there are weapons -- Your Honor mentioned the  
14 AK-47 fully automatic version, I doubt there are that many in  
15 Illinois. There are other firearms that are mentioned in the  
16 statute that are no longer produced for the domestic US  
17 market. If we want to take those off the litigation list,  
18 that's great. That will simplify things.

19           I can't get Plaintiffs to commit to that, though. I  
20 can't get -- like for instance, I know Mr. Maag has extensive  
21 firearm knowledge and we've seen in this case he'll introduce  
22 in reply, oh, what about these guns? What about these guns?  
23 It is very hard as a defendant to know what evidence we need  
24 when we don't even know what it is these Plaintiffs claim they  
25 want to do that they can no longer do. AR-15s, I get it.

1 Beyond that, we need basic disclosures in accordance with the  
2 Federal Rules of Civil Procedure.

3 THE COURT: What is in the legislative record? I  
4 mean, *Bruin* was -- *Heller*, *McDonald* and *Bruin* were the law of  
5 the land when the statute was passed. It is not like the  
6 Government wasn't on notice that there were tests that the  
7 Supreme Court or important things to the Supreme Court that we  
8 relate to gun ban legislation in these -- this is certainly  
9 gun ban legislation. Is there anything in the legislative  
10 that you guys developed that said, well, we can ban this gun  
11 because nobody owns it?

12 MR. WELLS: Well, Your Honor, I would say, one,  
13 again, this Court is an Article 3 court that decides cases or  
14 controversies as presented by the parties. Whether or not  
15 there was -- the scope of the legislative record, frankly,  
16 there is a lot of evidence in the record about AR-15s.  
17 There's witnesses from Highland Park for instance. Are we  
18 going to call those witnesses? I mean, there's a lot in the  
19 record if we want to retread the legislative history. Again,  
20 I don't know that that is necessary and frankly it may be  
21 overbroad because if Plaintiffs are really -- if they can  
22 articulate for us beyond the AR-15 group what it is that  
23 they're actually challenging, then maybe we don't need to go  
24 into the legislative record. This Court, again, is here to  
25 decide the case or controversy that Plaintiffs present, not

1 the kind of was this a good law, was this a bad law? Should  
2 it be tweaked here or elsewhere? We have got to litigate what  
3 the Plaintiffs are coming forward with.

4 THE COURT: All right. Did I hear somebody say  
5 earlier -- suggest earlier that maybe there would be a  
6 conference with a magistrate or a judge with the parties to  
7 see if some of this stuff can be narrowed?

8 MR. WELLS: Yes, Your Honor. This is Mr. Wells.  
9 That was our proposal to the Plaintiffs and we would  
10 absolutely support that and think it would be beneficial.  
11 Again, I think we've had some productive exchanges but even  
12 just getting everybody on the phone has been a challenge. So  
13 get in front of a magistrate and trying to be collaborative as  
14 we've shown to be in the past, I think that would be certainly  
15 helpful from our perspective.

16 THE COURT: Has the Plaintiffs agreed amongst  
17 yourself, or can you quickly agree amongst yourselves who --  
18 what lawyer or lawyers would be the ones that would  
19 participate in such a conference that could essentially  
20 represent the interest of everybody with respect to the  
21 specific guns that are banned and the attachments and  
22 accessories and magazines?

23 MR. ROWEN: This is Mr. Rowen for the Barnett  
24 Plaintiffs. If we are ordered to do so, we will endeavor to  
25 do our best to do so. I know that, as I mentioned at the

1     outset, there are some different claims against different  
2     parties among the four cases which adds a wrinkle and then  
3     some differences of perspective on exactly what is being  
4     challenged. So it may not be the case that we really can get  
5     a single lawyer for the Plaintiffs, but, you know, if we are  
6     ordered by the Court to do so, we will comply with whatever we  
7     are ordered to do.

8             THE COURT: You're ordered to do it so -- but instead  
9     of making you all fly in on short notice, even if it's two or  
10    three Plaintiffs' lawyers, do you think you guys can -- I  
11    mean, some of you guys are handling these cases nationally.  
12    Most of you are recognized as experts in Second Amendment  
13    cases, and I don't know how tough it would be. I mean think  
14    about it. But when I asked you last month to -- for you guys  
15    to get together and try to put together a joint proposal, that  
16    hasn't worked out, has it?

17            MR. BRADY: Your Honor, this is Sean Brady on behalf  
18    of the FFL Plaintiffs. I think perhaps it would be helpful to  
19    maybe put into perspective the discrepancy that the sides are  
20    having on the scope of what is being challenged because I  
21    think that would inform discovery -- I share Your Honor's view  
22    that this should not be as labor intensive and discovery  
23    intensive as I think the State might believe it is, but that's  
24    because they have a different view than at least I do and I  
25    believe the other Plaintiffs' counsel does about the scope of

1 these challenges.

2           We don't think that it's necessary to, for example,  
3 let's take semi-automatic handguns with a detachable magazine  
4 or with a threaded barrel, okay. Under our view, all that  
5 needs to be litigated is whether handguns, semi-automatic  
6 handguns with threaded barrels generally as a category are  
7 protected or not, are military arms or not. It sounds to me  
8 that the State is suggesting -- this is my understanding and  
9 Mr. Wells can correct me if I'm wrong -- that they want us to  
10 say you Plaintiffs need to have standing to challenge the  
11 restriction on a Colt 1911 with a threaded barrel and a Rock  
12 Island Armory 1911 with a threaded barrel or, for example,  
13 semi-automatic rifles that we think all we need to do is  
14 litigate whether semi-automatic center fire rifles with a  
15 detachable magazine and one of or more of the features  
16 identified by the statute, whether that as a group, as a  
17 category are protected arms or not. We don't think it's  
18 necessary to go down the list of every single firearm on the  
19 list of -- by make and model that are assault weapons  
20 identified by make and model because unless the State can  
21 identify some material difference in those models that would  
22 make a difference in the legal analysis.

23           So that I think -- if all we need to do is say, look,  
24 semi-automatic center fire rifles with a detachable magazine  
25 and one of the features as a category, whether you're talking

1 about the base model AR-15 like a Colt or Ruger that's a  
2 thousand bucks and millions of people have them or a very  
3 high-end AR that is custom made that only a few people have,  
4 we think that we don't need to litigate every single specific  
5 make and model of a gun. We just need to litigate the  
6 category of them. And I think if we get some input on how we  
7 would go about doing that -- and that's why I -- well, it's  
8 obviously Your Honor's decision whether to order us to go to a  
9 magistrate, but my concern with that is that that piece would  
10 not be understood by a magistrate or appreciated in how we're  
11 going -- how Your Honor wants to litigate this case.

12 MR. WELLS: Your Honor, this is Mr. Wells. If I may,  
13 just to clarify, I don't think our position is we need to go,  
14 Your Honor, threaded barrel by threaded barrel per firearm. I  
15 think there are categories like the AR-15 type that we've  
16 already focused on. I think, again, Mr. -- where I think we  
17 break ways with Mr. Brady is that, again, this Court is here  
18 to decide what Plaintiffs come forward and say they want to  
19 purchase or sell or manufacture and as we see it we don't see  
20 a lot of allegations indicating that, hey, you know what, we  
21 wanted a threaded barrel or a rifle where the only  
22 characteristic that it has that brings it within the scope of  
23 the statute is the threaded barrel. That's not how we see the  
24 case pled. We see the case pled as about modern sporting  
25 rifles and maybe a handful of other things, but that's the

1 case that has been presented here.

2           So to the extent that Mr. Brady is willing to tell me  
3 which of his Plaintiffs had an intent to acquire a  
4 semi-automatic rifle with a threaded barrel and that's the  
5 sole characteristic that brought it within the scope of the  
6 statute before January 9th, just tell us who that is, right?  
7 These are just kind of basic questions of standing that will I  
8 think inform the scope of what we actually have to litigate.  
9 I agree there's room to focus and streamline here, but it  
10 comes down to Plaintiffs telling us what specifically they're  
11 challenging about the statute and what they have standing to  
12 challenge.

13           MR. BRADY: Your Honor, Sean Brady. I just wanted to  
14 really quickly -- and then I'll defer to Mr. Sigale unless  
15 Your Honor wants to say something. I just want clarification  
16 from Mr. Wells because if he is saying all Plaintiffs have to  
17 do is to present somebody who says I want a semi-automatic  
18 center fire rifle with a detachable magazine as one of the  
19 features and doesn't have to say specifically one of the makes  
20 and models that are -- that I want this specific make and  
21 model, then I think we're in agreement on --

22           MR. WELLS: Mr. Brady, again, I think we had  
23 productive discussions. Again, the case has to be litigated  
24 in the real world, right? Like what gun did they want to buy  
25 that they can no longer buy? That has got to be the focal for

1 Article 3 standing. How have they been injured by the  
2 statute? It's not come in and let me red pen the statute.  
3 It's what do you want to buy that the statute says you can no  
4 longer buy or possess or whatever. That should dictate what  
5 the evidence in the case is.

6 MR. SIGALE: Your Honor, David Sigale for the Harrel  
7 Plaintiffs. And while I wish to first throw my concurrence  
8 behind Mr. Brady's stated position regarding the issue I also  
9 just want to clarify for the Court that of course while we  
10 will follow all court orders regarding working to narrow the  
11 issues and expedite discovery within the scope of those  
12 issues, the Harrel Plaintiffs are not -- do not wish to have  
13 this matter before a magistrate.

14 THE COURT: No. The discussion is going to be before  
15 me. I don't think that this -- this shouldn't be that tough.  
16 We know what -- so looking at the discussion in *Bevis*, the  
17 Seventh Circuit referred to the AR-15 and all of its cousins,  
18 which signalled to me that they were kind of lumping --  
19 lumping them all together, even if some had larger sales than  
20 others. So if you say that the AR-15 is the FI50 Ford truck  
21 and one of these others is, you know, Toyota, they seem to be  
22 lumping them all together and not necessarily insisting that  
23 each one has to be examined the way they looked at the AR-15.  
24 The analysis they had seemed to me to be more talking about  
25 the capabilities, perhaps, as an example. They pointed out



1 that the AR-15 fires three hundred rounds a minute in  
2 semi-automatic mode. That's five finger pulls a second every  
3 second for a minute. I mean unless you have a ten-foot long  
4 magazine on that or a barrel magazine that would be the size  
5 of a medicine bottle you wouldn't be able to get that done.  
6 So there may be come confusion on that, but more importantly  
7 the -- we need to narrow this down and I think what has to  
8 happen is a very quick meet and confer that I will supervise  
9 and then we'll talk about these things. With respect to with  
10 *Friedman and Bevis* in the sorting between military and private  
11 use, the military has told us what is reserved for military  
12 use. We already know that. The M4, the M16, full mil spec,  
13 that has the capabilities of switching between semi-automatic  
14 versus fire and full automatic. If the firearm does not have  
15 that capability, it's not reserved for our military. Okay?  
16 That's a pretty good starting point.

17 So now you have to ask yourself, all right, well,  
18 then if the arms are not excluded from the Second Amendment,  
19 because they're not reserved to the military, so then they are  
20 within the range of the reach of the reach of the Second  
21 Amendment then you're looking at, all right, if these are arms  
22 then can they be -- can Government, a Government restrict the  
23 sale of possession of some of them because they are more  
24 military like than they are civilian like. That's not going  
25 to be -- that's going to be an interesting test to apply.

1 But I'm looking at the proposed timeframe from the  
2 Government. That is way, way too long, getting us out in  
3 November. I don't want to do that. In studying what other  
4 courts have done with these things and thinking about what one  
5 would present for a final hearing on the merits and what  
6 they've done in other courts, I don't think that it's going to  
7 be too terribly difficult to do. I suspect that the State  
8 will probably come up with a handful of experts to talk about  
9 different things, maybe identify as experts some of the  
10 affidavits and material that they filed in opposition to the  
11 Plaintiffs' various motions for injunctive relief. I don't  
12 know what the Plaintiffs are going to do, but I mean some  
13 Plaintiffs are bona fide experts in their own right. They  
14 sell these things. They are federally licensed firearm  
15 dealers. And so they can -- their opinions could be relevant  
16 as to what sales are like at their facilities, what was the  
17 market in Illinois, are there people who are buying these  
18 weapons? Are there different features that might be more  
19 attractive to different people, but it doesn't have to be that  
20 complicated.

21 I also think that a lot of the stuff can be narrowed  
22 down. You probably could stipulate to stuff if you -- to a  
23 lot of it if you are so inclined to work together, but the  
24 Plaintiffs and defendants don't have to work together. You  
25 can make more work for yourselves. That's for sure. The sort

1 of things that I think I would be looking at is are these  
2 firearms commonly owned and held by civilian gun owners for  
3 any lawful use and might it include self-defense.

4 Now, the Seventh Circuit spoke only about  
5 self-defense in the home and, of course, we are called upon to  
6 defend ourselves in a lot of other places than just the home.  
7 Maybe at work. Maybe -- think of a woman who has some maniac  
8 stalking her and is looking to jump when she's most  
9 vulnerable. That might be walking on a poorly lit parking  
10 lot. There are a lot of cases that people are called upon to  
11 defend themselves, and I'm not going to limit it to just  
12 looking at on what guns would be helpful to you if you were at  
13 your front door fully armed confronting somebody at your front  
14 door that was trying to get in. Self-defense situations,  
15 scenarios have a lot more dynamics than just that. Magazines  
16 and attachments, are they commonly owned by civilians? With  
17 respect to attachments does it have a use or function that may  
18 be of value to citizens, improve accuracy, improve the fit of  
19 the gun, improve safety, protect against hearing damage,  
20 reduce recoil, add or increase tactical advantages that the  
21 person engaging in self-defense might enjoy with these  
22 additional attachments. So those may be things that you want  
23 experts to testify about.

24 As far as written discovery, from the State's  
25 standpoint you're defending a law that you've already written

1 and one presumes that you've looked into all these things  
2 before they passed the law. Now you're trying to play  
3 catch-up and figure out what are the ramifications of what  
4 they actually banned, what are the uses to citizens of guns  
5 they've already denied them the right to purchase.

6 I'm not interested in delaying this case for any  
7 length of time so the Government can figure out what it is  
8 that they actually passed in legislation. I think that the  
9 lawyers in this case have demonstrated a very facile  
10 understanding of firearms and the attachments. They are not  
11 without resources to secure information about the -- you know,  
12 what is in the owner's manual with respect to these guns.  
13 Most of these guns will tell you, the manufacturer will tell  
14 you what the expected rate of fire is for Bennett. Is it 60  
15 rounds a minute? It is a 100 rounds a minute? Whatever. But  
16 that should not be that difficult to get and I would think  
17 that the manufacturers and sellers of a lot of these firearms  
18 would be more than happy to cooperate with the Plaintiffs.

19 There are millions of people in Illinois that buy  
20 these firearms. There's a market for it. There's millions of  
21 people that look to buy ammunition so they can use their  
22 firearms, they can practice firing their firearms, so it  
23 should not be that difficult. Anybody else want to weigh in?  
24 Dave, do you have anything else you wanted to say about  
25 discovery?

1 MR. SIGALE: I'm sorry, Your Honor. David Sigale.  
2 Is Dave me?

3 THE COURT: That's you.

4 MR. SIGALE: It is. Okay. Well, I'm normally not  
5 one to pass up an opportunity for a soap box, but, no, Your  
6 Honor. I have nothing more to say. What Matt and Sean said I  
7 think summed it up really well. Thank you, though.

8 MR. WELLS: Your Honor, if I may just make a couple  
9 of observations. One, I appreciate all the items the Court  
10 noted of particular interest, and I think that is very helpful  
11 to the State defendants. I think one of the things that would  
12 be very clarifying for us is to get an understanding from the  
13 Court if the Court is open to a quote/unquote trial on the  
14 papers. The advantage of that from our perspective is to the  
15 extent is part of our concern here is the element of surprise.  
16 We've got instances in this case where people are citing new  
17 weapons in reply. If we have a trial in the papers where  
18 Plaintiffs are filing first and we can respond, that  
19 significantly mitigates the anxiety that I think you're  
20 hearing from me about, frankly, the element of surprise, which  
21 the federal rules are designed to prevent. That I think is at  
22 the bottom of what we're going for here. What do they have  
23 standing for, what have we proven up and let's be clear about  
24 that list so that there's not new stuff added along the way.

25 THE COURT: Well, so it sounds like to me maybe a way

1 to move forward is for me to set a court-supervised discovery  
2 conference. There has not been agreement. These type of  
3 cases are a little different than your regular personal injury  
4 action or contract dispute, but I think that if we set aside  
5 some time soon for attorneys for the State to sit down and  
6 confer with a representative group of the Plaintiffs' counsel  
7 we can probably -- we can probably get 95 percent of this  
8 hammered out and, you know, one of the things I wanted you  
9 guys to be thinking about is what would trial look like. Are  
10 we going to rely on experts? Are we going to call people in  
11 to testify? Are we just going to submit like business  
12 records? You know, the parties are going to stipulate that  
13 the following documents are the owner's manual or  
14 specification sheet for certain firearms that are identified  
15 in -- specifically identified in the statute.

16 I don't know who owns a grenade launcher. Can we  
17 even own grenades legally? You know, if you are launching  
18 tennis balls to your golden retriever, I don't know what --  
19 okay. Unless you use it, as I say, to launch tennis balls to  
20 your golden retriever or border collie, you know.

21 All right. I'm in a jury trial for they tell me two  
22 more weeks. I don't think it's going to go quite that long.  
23 Who do we have local? We have the Maag brothers. Who else is  
24 in the St. Louis metropolitan area? All right. I -- by  
25 Tuesday, Plaintiffs' lawyers are going to submit to me a

1 representative group of lawyers to participate in a  
2 settlement -- a discovery conference and scheduling  
3 conference. Principally discovery to set the parameters of  
4 discovery and then coupled with a suggested schedule for  
5 others to look at and see if they think it can work. I want  
6 that by next Tuesday. The discovery conference will be in  
7 person so whoever is going to represent the Plaintiffs will be  
8 expected to be here in person in East St. Louis. I'll set  
9 aside a day. I don't know that it's going to need to take a  
10 day but I'll set as much time as we need because based upon my  
11 reading of other cases, as I say most of them have not -- most  
12 of them have not ended up with lengthy evidentiary hearings  
13 with a lot of testimony. It's been more stipulations,  
14 declarations, business records and the depositions of experts.

15 So all right. Anybody else want to be heard on any  
16 matter?

17 MR. SIGALE: Just, Your Honor, David Sigale for  
18 Harrel. When the Court is setting that in-person conference,  
19 if the Court would kindly not set it from March 1st to  
20 March 8th, I'll be out of town.

21 MR. WELLS: The same is true for the State  
22 defendants.

23 THE COURT: It will be before that.

24 MR. SIGALE: I figured, but I wanted to make sure.

25 THE COURT: In case you know, I've been good about

1 your vacations.

2 MR. WELLS: I know, Your Honor. I appreciate it and  
3 I know my wife and my two children do too. I sincerely do  
4 appreciate it.

5 MR. SIGALE: The same, Your Honor.

6 THE COURT: Anybody else?

7 MR. WELLS: If I could just clarify. So the  
8 Plaintiffs are submitting it to the Court. Are they filing  
9 that on the record or are they going to just tender it en  
10 camera and copy us? I just want to make sure that -- I wasn't  
11 exactly sure as to who is getting it on Tuesday if that makes  
12 sense. Sometimes if it's negotiations it goes only to the  
13 judge. It sounds like this is something that might be filed  
14 on the docket or tendered to us simultaneously, I presume.

15 THE COURT: I'm sorry. The audio in here is bad. I  
16 missed some of that.

17 MR. WELLS: This is Mr. Wells. I was trying to get  
18 clarification that Plaintiffs are going to submit their list  
19 of counsel both to the Court and to us, the State defendants  
20 at the same time.

21 THE COURT: Well, they have to submit it to me, at  
22 least. Why don't you guys submit to me? If there's a dispute  
23 between the Plaintiffs, I'll decide that first and then I'll  
24 promptly inform you, Chris, who is on that team and you guys  
25 would be free to talk about these issues before we get



1 together, but we'll be planning to get together promptly.

2 MR. WELLS: Understood.

3 THE COURT: All right. Anybody else? All right.

4 This is a very important matter. The claimants believe that  
5 their constitutional rights have been imperiled and so it's  
6 the Court's belief that I should try to work through this with  
7 as much dispatch as possible, understanding that we want to  
8 get it right and that whatever discovery needs to be exchanged  
9 can be exchanged, but also understanding that in these cases  
10 there generally isn't a lot of prolonged and detailed  
11 discovery.

12 So -- I would encourage the Plaintiffs to continue to  
13 confer amongst themselves, trade information about who you may  
14 want to call as live witnesses and why, see if you guys can  
15 agree on an expert or two and I'd be reaching out to these  
16 manufacturers and seeing what kind of business records that  
17 you can get from them that the State might agree are  
18 admissible business records and that could be relied upon for  
19 the Court to answer some of the questions that might be  
20 relevant to the inquiry. With that, we are adjourned.  
21 Everyone enjoy your weekend. Thank you.

22 (Proceedings concluded at 2:32 p.m.)  
23  
24  
25

REPORTER'S CERTIFICATE

\* \* \* \* \*

I, Erikia T. Schuster, RPR, Official Court Reporter for the U.S. District Court, Southern District of Illinois, do hereby certify that I reported with mechanical stenography the proceedings contained in pages 1-34 and that the same is a full, true, correct and complete transcript from the record of proceedings in the above-entitled matter.

/S/ Erikia T. Schuster  
IL CSR, RPR

2/5/2024